IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 379 OF 2001

1. Shri Dnyaneshwar Sahebrao Babar ..Appellant

Vs.

1. Shri Rajaram Daulata Pawar and anr. ..Respondents

Mr. K.B. Sonwalkar for appellant.
Mr. Prathamesh Bhaigude i/by Mr.A.V. Anturkar for respondent no.1.

CORAM: B.H. MARLAPALLE, J.

Date : March 14, 2007.

P.C.:

1. Heard Mr. Sonwalkar the learned counsel for the appellant - original defendant no.1 in RCS No. 398 of 1987. The said suit was filed by the present respondent no.1-Rajaram Daulata Pawar and the present respondent no.2 was impleaded as defendant no.2. The plaintiff claimed to the owner of the agricultural land in Gat No.98 of village Paniv and the sole possessor of the said land. Whereas the land of the defendant no.1 was in Gat No.100 located on the northern side, western corner of the plaintiff's land and defendant no.2 had his land in Gat No.99 also at

the northern side but eastern corner of the plaintiff's land. The lands are east-west in direction and on the eastern side of the land there is canal patti of paniv minor irrigation and on the western side there is paniv Gaonthan land. The plaintiff prayed that the defendants be restrained from carrying bullock-carts etc. from the crops standing in his land and further restrained from creating new road through his land. This suit was dismissed by the learned Civil Judge, Junior Division, Malshiras vide his Judgment and Order dated 9/11/1992 after taking into consideration the say filed by the defendant nos.1 and 2 at Exh.17 and the pursis at Exh.29. The plaintiff, therefore, filed Civil Appeal No.156 of 1992 and the same came to be allowed by the learned Additional District Judge at Pandharpur vide his Judgment and Order dated 17/4/2000. The Lower Appellate Court decreed RCS No. 398 of 1987 and restrained the defendants perpetually from carrying out their carts or vehicles from the land of the plaintiff. This decree has been in operation for the last about seven years when this second appeal is waiting for admission and no stay by way of ad-interim

order has been granted on the said decree by this court.

2. There is no dispute that initially the entire land was bearing Survey No.32 and it was subsequently divided into five parts. Survey No.32/1 was given to Tanaji, the brother of the plaintiff and it was numbered as Gat No.101, Survey No.32/2 was sold to the defendant no.1 and was given Gat No.100, Survey No.32/3 was sold to defendant no.2 and was subsequently given Gat No.99, Survey No.32/4 was sold to Shahaji Babar and was given Gat No.102 and the plaintiff was left with the land in Survey No.32/2 and it was given Gat No.98. The land of plaintiff in Gat No.98 is other South of entire Gat No.99 and some portion of Gat No.100. As far as land in Gat No.99 is concerned, on the eastern side there is a road adjacent to the canal and the said road and canal run south-north and parallel to each other. This land in Gat No.99 is that of defendant no.2 and, therefore, there was no reason for him to go through the land of plaintiff for using his own land and therefore, the appellate court was right in holding that the suit was

required to be decreed with respect to the defendant no.2.

3. As far as the defendant no.1 is concerned, he claimed easementary right to come through the plaintiff's land i.e. from the northern portion of the land of the plaintiff and he claimed his right by prescription as well as easement of necessity. However, as noted by the Lower Appellate Court, the defendant no.1 did not step in the witness box and did not adduce any documentary evidence to establish such an easementary prescription. He did not produce a copy of the sale deed under which he had purchased the land in Gat No.99 and to show that he was granted a right of road through the plaintiff's land. Even the findings of the trial court did not speak anything to bold that the defendant no.1 had acquired any such right by way of prescription through the land of the plaintiff. The Lower Appellate Court also noted from the file of the trial court that a certified copy of the depositions of Vithhal Pawar recorded by the Tahsildar on 11/1/1979 was available and in the same

document Vithhal’s statement read thus:-

. Similarly at Exh.65 was a certified copy of Tanaji Pawar’s deposition recorded by the Tahsildar, Malshiras on 11/7/1979 and it stated thus:-

4. On the basis of this evidence the learned Judge of the Lower Appellate Court rightly held that the plaintiff was entitled for an order of perpetual injunction and that none of the defendants could, as a matter of right, claim any easementary rights of way through the land of the plaintiff.

5. Under these circumstances, no substantial question of law arises for consideration of this court

and, therefore, the appeal is dismissed in limine.

(B.H. Marlapalle,J.)